

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JASON WAYNE CHILDS,	§	
#39670-177,	§	
PLAINTIFF,	§	
	§	
V.	§	CIVIL CASE No. 3:23-CV-429-O-BK
	§	
UNITED STATES OF AMERICA,	§	
DEFENDANT.	§	

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to [28 U.S.C. § 636\(b\)](#) and *Special Order 3*, this *pro se* case was referred to the United States magistrate judge for case management, including the issuance of findings and a recommended disposition. As detailed here, this action should be **DISMISSED WITHOUT PREJUDICE** for failure to comply with a court order and for want of prosecution.

On March 1, 2023, the Court issued a deficiency order advising Plaintiff that, insofar as he sought to proceed with a civil action, his complaint must be filed on the court-approved complaint form and submitted with the \$402.00 filing fee or a request to proceed *in forma pauperis*. Doc. 6. *See also* N.D. Tex. Misc. Ord. 14 (requiring inmates to file civil rights complaints and motions to proceed *in forma pauperis* on the court-approved forms). The deadline for Plaintiff's response was March 30, 2023. However, Plaintiff has neither responded to the Court's deficiency order nor sought an extension of time to do so.


Rule 41(b) of the Federal Rules of Civil Procedure allows a court to dismiss an action sua sponte for failure to prosecute or for failure to comply with the federal rules or any court order.

[Larson v. Scott](#), 157 F.3d 1030, 1031 (5th Cir. 1998). "This authority flows from the court's

inherent power to control its docket and prevent undue delays in the disposition of pending cases.” *Boudwin v. Graystone Ins. Co., Ltd.*, 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962)).

Plaintiff has been given ample opportunity to respond to the Court’s order. He has impliedly refused or declined to do so. Therefore, this action should be **DISMISSED WITHOUT PREJUDICE** for failure to comply with a court order and for lack of prosecution. See **FED. R. CIV. P. 41(b)** (an involuntary dismissal “operates as an adjudication on the merits,” unless otherwise specified).¹

SO RECOMMENDED on April 24, 2023.



RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

A copy of this report and recommendation will be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. See **28 U.S.C. § 636(b)(1)**; **FED. R. CIV. P. 72(b)**. An objection must identify the finding or recommendation to which objection is made, the basis for the objection, and the place in the magistrate judge’s report and recommendation the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. See *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1417 (5th Cir. 1996), modified by statute on other grounds, **28 U.S.C. § 636(b)(1)** (extending the time to file objections to 14 days).

¹ Absent a proper complaint, the Court cannot determine when the events at issue occurred. As such, it is unclear whether the higher standard for dismissal with prejudice for want of prosecution would apply in this case. See *Callip v. Harris County Child Welfare Dep’t*, 757 F.2d 1513, 1519 (5th Cir. 1985).